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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/746,901	11/18/1996	ISAAC K. ELLIOTT	MCIC-105/00U	8149
25537	7590	05/20/2002		EXAMINER
WORLDCOM, INC. TECHNOLOGY LAW DEPARTMENT 1133 19TH STREET NW WASHINGTON, DC 20036			NGUYEN, STEVEN H D	
			ART UNIT	PAPER NUMBER
			2665	
DATE MAILED: 05/20/2002				

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

	Application No. 08/746,901	Applicant(s) ELLIOTT, ISAAC K.
	Examiner Steven HD Nguyen	Art Unit 2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 27 February 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 31-40 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>20</u>	20) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 31-38 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turock (USP 6243373) in view of Kenner (USP 6003030) and Gawlick (USP 6175870).

As claims 31-38, Turock discloses (Fig 2-10 and col. 5, lines 17 to col. 15, lines 54) a plurality of gateways (Fig 2, Ref 206 and 216) and call router (Fig 5, Ref 512) which connects the switched communication network and the packet network having a logic (Fig 5, Ref 506)

which transmits a query message which includes a call type of service to the directory service (Fig 5, Ref 514) to obtain a plurality of gateways that match the predefined call service criteria including QOS “cost” and a gateway registration scheme “gateways registered in the database” (See col. 9, lines 1-25) and an identifier of the call to an associated IP address; ranging the selected gateways according the least cost routing; selecting a shortest path gateway for placing a telephone call and selecting a next one if the shortest one is not available (See col. 9, lines 26-65). However, Turock does not disclose transmitting a message to each of a plurality of gateways by using a trace route, ranks the plurality of gateways according to the result of the trace route message. In the same field of endeavor, Kenner disclose a communication system which queries a database to obtain a list of plurality servers “gateways” and sends a trace route message to each of plurality of gateways and prioritizing the plurality of gateways according to the test results and selecting a highest priority “shortest hop” to transmit a message (See col 18, lines 60 to col 19, lines 33, col 9, lines 55 to col 10, lines 10; col 11, lines 20-27). Gawlick discloses a communication system for routing a call on the highest ranked path “minimum hop path if hop equal 1, it means no router between the access point and gateway, col. 6, lines 44-60”; if failing, the call will be routed via a next highest ranked path in the set of paths (See Fig. 5, Ref 515, 530, 550 and 527).

Since, Turrock suggests a method of routing a call based on least cost routing and monitoring the quality of the voice. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply the teaching of Kenner and Gawlick such as determining the delay between the access point and the plurality of servers and ranging according to the test results into Turock’s internet telephony system. The motivation

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would have been to maintain the quality service of audio packets. Even without the teaching of Kenner and Gawlick, one of ordinary skill in the would recognize a step of using a trace route command fro a well known testing tool in the Internet protocol to determine an optimal route between the nodes.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



Steven HD Nguyen  
Examiner  
Art Unit 2665  
May 14, 2002